

INFORMATION SHEET  
 DETERMINATIONS OF NO JURISDICTION FOR ISOLATED, NON-NAVIGABLE, INTRA-STATE WATERS RESULTING  
 FROM U.S. SUPREME COURT DECISION IN SOLID WASTE AGENCY OF NORTHERN COOK COUNTY  
 V. U.S. ARMY CORPS OF ENGINEERS

DISTRICT OFFICE: Philadelphia

FILE NUMBER: CENAP-OP-R-200100843

REGULATORY PROJECT MANAGER: Kevin Dougherty Date: January 31, 2007

PROJECT REVIEW/DETERMINATION COMPLETED: In the office (Y/N) Date: \_\_\_\_\_  
 At the project site Y (Y/N) Date: March 23, 2006

PROJECT LOCATION INFORMATION:

State: Pennsylvania

County: Bucks

Center coordinates of site by latitude & longitudinal coordinates: 40.422663 N; -75.422731 W

Approximate size of site/property (including uplands & in acres): 95.281

Name of waterway or watershed: Schmoutz Creek (Schuylkill River)

SITE CONDITIONS:

Type of aquatic resource <sup>1</sup>	0-1 ac	1-3 ac	3-5 ac	5-10 ac	10-25 ac	25-50 ac	> 50 ac	Linear feet	Unknown
Lake	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
River	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stream	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dry Wash	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mudflat	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sandflat	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Wetlands	<input checked="" type="checkbox"/> 0.365 ac	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Slough	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Prairie pothole	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Wet meadow	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Playa lake	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vernal pool	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Natural pond	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other water (identify type)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<sup>1</sup>Check appropriate boxes that best describe type of isolated, non-navigable, intra-state water present and best estimate for size of non-jurisdictional aquatic resource area.

Migratory Bird Rule Factors <sup>1</sup> :	If Known		If Unknown Use Best Professional Judgment		
	Yes	No	Predicted to Occur	Not Expected to Occur	Not Able To Make Determination
Is or would be used as habitat for birds protected by Migratory Bird Treaties?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is or would be used as habitat by other migratory birds that cross state lines?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is or would be used as habitat for endangered species?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is used to irrigate crops sold in interstate commerce?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<sup>1</sup>Check appropriate boxes that best describe potential for applicability of the Migratory Bird Rule to apply to onsite, non-jurisdictional, isolated, non-navigable, intra-state aquatic resource area.

TYPE OF DETERMINATION: Preliminary ☐ Or Approved ☒ .

ADDITIONAL INFORMATION SUPPORTING NJD (e.g., paragraph 1 – site conditions; paragraphs 2-3 – rationale used to determine NJD, including information reviewed to assess potential navigation or interstate commerce connections; and paragraph 4 – site information on waters of the U.S. occurring onsite):

1. SITE CONDITIONS

a. The site is a 95 acre tract (TMP 23-10-188, Milford Township, Bucks County, PA) consisting of actively cultivated fields (corn and soybeans), fallow cropland, land in pasturage or hay production, uncultivated old fields and shrub-scrub thickets which include hedgerows dividing fields and along roadways, and three seral woodlots. One woodlot was located in the northeastern corner of the property, the second lies just to the north and west of the building complex, and the third lies in the southwestern and west southwestern portions of the property. A gravel surfaced drive extends west from Krammes Road to an abandoned farm complex located near the center of the site. This complex consisted of 6-9 structures and foundations.

b. Topographically the property is a broad south-facing ridge with the ridge crest to the north of the northern site boundary. Site elevations decrease to the south southwest in a series of long slopes and flats. The lowest relief is found in the southwest portions of the site. Soils mapped on the site consist of materials originating either from Triassic shale and siltstone (Reaville, Bowmansville) or in colluvium from igneous materials (Amwell, Croton, Towhee). Mapped soils ranged from moderately well through poorly drained series and series phases.

c. Watercourses on the site consist of two unnamed perennial tributaries identified as 1) Waters 1 and 2 and 2) Water 5 on the plan and two unnamed intermittent tributaries, identified as 3) Water 3 and Water 4, to Schmoutz Creek. There are six wetlands contiguous with either Waters 1 and 2 (Wetlands A-D) or Water 3 (Wetlands E and F). The intermittent tributaries (Waters 3 and 4) are partially channelized first order streams. Four areas on the site were identified as wetlands using the criteria contained in the 1987 Corps of Engineers Wetland Delineation Manual. However all four areas were neither adjacent to a part of the surface tributary system of an interstate navigable water nor had a significant nexus to interstate or foreign commerce.

2. RATIONALE FOR DETERMINATION:

a. Area A is an irregularly shaped 0.218 acre area of PF01 bounded within flags AA1 through AA22 and located in the northeastern corner of the surveyed property. The area consists of a closed depression with a high local water table perched upon an underlying fragipan. Canopy dominants include a mixture of 10-20 inch DBH pin oak (*Quercus palustris*), red maple (*Acer rubrum*) and green ash (*Fraxinus pensylvanica*) trees with a sparse shrub and ground layer. Water accumulates in the shallow subsurface and there is evidence of some surface ponding however, no surface outlet was observed. Therefore, the wetland is not contiguous with a water of the United States. The closest surface water bodies lay approximately 1300 LF to the east or 1150 LF to the west southwest. In either case, Area A is separated by too great a distance to be considered either bordering or neighboring to a part of the surface tributary system of a water of the United States and thus is an isolated intrastate wetland.

b. To determine if jurisdiction could be asserted the following factors were considered:

1. The area has no permanent standing water and could not support any type of vessel. The area is therefore not navigable in fact.
2. The small size of the wetland and the lack of any unusual properties make it unlikely that the wetland could be used for recreational, educational, or scientific use by interstate or foreign travelers (33 CFR 328.3 (a)(3)(i)) and there is no record of such use. The wetland supports neither fish nor shellfish and water from it could be used neither to irrigate crops nor for industrial or commercial processes that could produce goods sold or transported in interstate or foreign commerce (33 CFR 328.3 (a)(3)(iii)). The wetland is forested but based upon the size of the area, the species mix and tree size, and the prevailing market for such timber, it does not contain merchantable timber that could be harvested and sold in interstate or foreign commerce (33 CFR 328.3 (a)(3)(iii)). There are no known mineral deposits, and the area does not contain sand or gravel deposits that could be extracted and sold in interstate or foreign commerce (33 CFR 328.3 (a)(3)(iii)).

c. Based upon the factors considered above, Area A is an isolated, intrastate wetland with no nexus to interstate or foreign commerce. As such, pursuant to 33 CFR 328.3, it is not a water of the United States, and is not subject to Section 404 of the CWA.

d. Area B is an irregularly shaped 0.060 acre area of PEM bounded within flags AC1-5 crossing to AC16-21 and located at the head of a swale some 450 feet north of the building complex on the site. The area consists of closed depression and swale with seasonal saturation and groundwater discharge along the slope. Water from the area discharges into a shallow swale but this swale lacks a continuous Ordinary High Water (OHW) line. Furthermore, discharge from this swale ultimately dissipates into sheet flow. As such, the wetland has no direct hydrologic connection with part of a surface tributary system of a water of the United States and therefore it is not contiguous with a water of the United States. The closest water body that is part of a surface tributary system is located approximately 850 LF downslope from the wetland. This is too great a distance for Area B to be considered either bordering or neighboring to a part of the surface tributary system of a water of the United States and thus it is an isolated intrastate wetland.

e. To determine if jurisdiction could be asserted the following factors were considered:

1. The area has no permanent standing water and could not support any type of vessel. The area is therefore not navigable in fact.
2. The small size of the wetland and the lack of any unusual properties make it unlikely that the wetland could be used for recreational, educational, or scientific use by interstate or foreign travelers (33 CFR 328.3 (a)(3)(i)) and there is no record of such use. The wetland supports neither fish nor shellfish and water from it could be used neither to irrigate crops nor for industrial or commercial processes that could produce goods sold or transported in interstate or foreign commerce (33 CFR 328.3 (a)(3)(iii)). The wetland does not contain merchantable timber that could be harvested and sold in interstate or foreign commerce (33 CFR 328.3 (a)(3)(iii)); there are no known mineral deposits, and the area does not contain sand or gravel deposits that could be extracted and sold in interstate or foreign commerce (33 CFR 328.3 (a)(3)(iii)).

f. Based upon the factors considered above, Area B is an isolated, intrastate wetland with no nexus to interstate or foreign commerce. As such, pursuant to 33 CFR 328.3, it is not a water of the United States, and is not subject to Section 404 of the CWA.

g. Area C is an irregularly shaped 0.079 acre area of PEM bounded within flags AE9-11 crossing to AE15-24 and located near the middle of the swale noted in 2(d) above. Area C is located just north of the building complex on the site. The area consists of closed depression and swale with seasonal saturation and groundwater discharge along the slope. Water from the area discharges into a shallow swale and parts of an old farm

road and ditch but this system lacks a continuous Ordinary High Water (OHW) line. Furthermore, discharge from this swale ultimately dissipates into sheet flow. As such, the wetland has no direct hydrologic connection with part of a surface tributary system of a water of the United States and therefore it is not contiguous with a water of the United States. The closest water body that is part of a surface tributary system is located approximately 285 LF from the wetland but water could not flow from the wetland into this watercourse due to site topography. The closest surface tributary within the flow path of this wetland is approximately 800 LF to the southwest. This is too great a distance for Area C to be considered either bordering or neighboring to a part of the surface tributary system of a water of the United States and thus it is an isolated intrastate wetland.

h. To determine if jurisdiction could be asserted the following factors were considered:

1. The area has no permanent standing water and could not support any type of vessel. The area is therefore not navigable in fact.
2. The small size of the wetland and the lack of any unusual properties make it unlikely that the wetland could be used for recreational, educational, or scientific use by interstate or foreign travelers (33 CFR 328.3 (a)(3)(i)) and there is no record of such use. The wetland supports neither fish nor shellfish and water from it could be used neither to irrigate crops nor for industrial or commercial processes that could produce goods sold or transported in interstate or foreign commerce (33 CFR 328.3 (a)(3)(iii)). The wetland does not contain merchantable timber that could be harvested and sold in interstate or foreign commerce (33 CFR 328.3 (a)(3)(iii)); there are no known mineral deposits, and the area does not contain sand or gravel deposits that could be extracted and sold in interstate or foreign commerce (33 CFR 328.3 (a)(3)(iii)).

i. Based upon the factors considered above, Area C is an isolated, intrastate wetland with no nexus to interstate or foreign commerce and pursuant to 33 CFR 328.3, it is not a water of the United States and is not subject to Section 404 of the CWA.

j. Area D is a linear PEM wetland dominated by cattail (*Typha latifolia*) and located within a 0.008 acre portion of a ditch along the northern side of the driveway. The area is bounded within flags AG1-AG-6-11 and located just west of Krammes Road. The remainder of the ditch from west of Area D to near Wetland B lacks either an OHW or wetland characteristics. The area has no discharge point into a water course and has no direct hydrologic connection with part of a surface tributary system of a water of the United States. Therefore it is not contiguous with a water of the United States. The distance from Area D to the closest part of a surface tributary system of a water of the United States is greater than 700 LF. This is too great a distance for Area D to be considered either bordering or neighboring to part of the surface tributary system of a water of the United States and thus Area D is an isolated intrastate wetland.

k. To determine if jurisdiction could be asserted the following factors were considered:

1. The area has no permanent standing water and could not support any type of vessel. The area is therefore not navigable in fact.
2. The small size of the wetland and the lack of any unusual properties make it unlikely that the wetland could be used for recreational, educational, or scientific use by interstate or foreign travelers (33 CFR 328.3 (a)(3)(i)) and there is no record of such use. The wetland supports neither fish nor shellfish and water from it could be used neither to irrigate crops nor for industrial or commercial processes that could produce goods sold or transported in interstate or foreign commerce (33 CFR 328.3 (a)(3)(iii)). The wetland does not contain merchantable timber that could be harvested and sold in interstate or foreign commerce (33 CFR 328.3 (a)(3)(iii)); there are no known mineral deposits, and the area does not contain sand or gravel deposits that could be extracted and sold in interstate or foreign commerce (33 CFR 328.3 (a)(3)(iii)).

l. Based upon the factors considered above, the Area D is an isolated, intrastate wetland with no nexus to interstate or foreign commerce. As such, pursuant to 33 CFR 328.3, it is not a water of the United States, and is not subject to Section 404 of the CWA.

### 3. WATERS OF THE UNITED STATES:

Jurisdictional waters on the site consist of two unnamed perennial tributaries identified as 1) Waters 1 and 2 and 2) Water 5 on the plan and two unnamed intermittent tributaries, identified as 3) Water 3 and Water 4, to Schmoutz Creek. There are six wetlands contiguous with either Waters 1 and 2 (Wetlands A-D) or Water 3 (Wetlands E and F). Schmoutz Creek is tributary to Unami Creek which is tributary to the Perkiomen Creek. The Perkiomen Creek is tributary to the Schuylkill River, which is an intrastate, navigable water of the United States pursuant to 33 CFR 328.3(a)(1). The Schuylkill River is tributary to the Delaware River, an interstate navigable water of the United States pursuant to 33 CFR 328.3(a)(1) and 33 CFR 329.4. The unnamed tributaries are therefore part of the surface tributary system of a water of the United States and are waters of the United States pursuant to 33 CFR 328.3(a)(5). Wetlands contiguous with the unnamed tributary are wetlands adjacent to a water of the United States (33 CFR 328.3(c)). Adjacent wetlands are waters of the United States pursuant to 33 CFR 328.3(a)(7). The intermittent tributaries (Waters 3 and 4) are partially channelized first order streams. These waterways are conduits for the discharge of sediments, agricultural chemicals, oils, greases, other petrochemical products, rubbers and plastics, metals and metalloids from the roadway surfaces, all of which originate in the surrounding landscape, into the perennial portions of the surface tributary system of navigable waters. Cumulatively these intermittent tributaries may convey appreciable quantities of these pollutants leading to the degradation of water quality in the Schuylkill River, a navigable water of the United States. As such, these intermittent waters have a significant nexus to the maintenance of water quality in downstream navigable waterways.

### 4. COMMENTS:

The site contains numerous areas initially identified as waters of the United States including wetlands by one or more parties. Upon examination, many of the areas originally delineated on the basis of a predominance of hydrophytic vegetation were found to lack hydric soils. As such they were identified as uplands. Other areas identified as ephemeral streams were found not to have distinct OHW lines as thus were classified as upland erosional features.